



November 6, 2001

Ms. Sharon E. Hicks
City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2001-5137

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned the following ID numbers: 154430 and 154557.

The Abilene Housing Authority of the City of Abilene (the "AHA") received requests for information related to a contract between the AHA and Gene Duke Builders, Inc. The requestor seeks the following information:

- 1) [a]ll Corps of Engineer reports and inspection reports received by AHA on the subject project, as referred to by Carrie Dobbins in conversation with Gene Duke
- 2) [a]ll of Mark Jones' field reports
- 3) [a]ll of Nolan Freeman's field reports
- 4) [a]ll of each inspector's field reports
- 5) [a]ll field notes of Bob Thompson, field architect for Cameron Alread, agent of AHA on the job

- 6) [t]he "extensive file" referred to on p. 10 of Roberta Thompson's letter of 10/03/00
- 7) [a] copy of "as built" plans for the subject property
- 8) [c]omplete Asbestos Survey Report-Reference Cameron Alread Fax to John Sanchez dated 2/14/00
- 9) [m]inutes, recordings, etc. from monthly and/or special AHA Board or Commissioner's meeting
- 10) Fort Worth HUD letter to Roberta Thompson or Sharon Hicks as referred to in the June 26, 2001 letter of Assistant Attorney General June Harden to Sharon Hicks, note 2 page 2 of said letter
- 11) [a]ll photographs of the referenced project
- 12) Fort Worth HUD inspection reports
- 13) [t]ape recordings of 8/01/00 meeting in which Dick Parker left early and resigned from Gene Duke Builders, as reflected in a letter, copy to Cameron Alread dated 8/01/00
- 14) AHA letter to Cameron Alread dated 10/12/00 as noted in Cameron Alread letter to Nolan Freeman dated 10/16/00 (Exhibit 27 of Gene Duke Builders Claim Book)
- 15) [c]orrespondence of Roberta Thompson to Merchants Bonding Company and correspondence from Merchants Bonding Company to Roberta Thompson
- 16) [i]nter-Office memos between AHA Staff in regard to CIAP Projects referenced above
- 17) [c]opies of all tapes that are clear enough to be understood
- 18) [c]opies of the resumes and personnel files for the following individuals: Roberta Thompson, Nolan Freeman, John Sanchez, Mario Najera, Frances Gonzalez, Mark Jones and Dirk Lindley
- 19) [a]ll correspondence between the Abilene Housing Authority personnel and the Brady Housing Authority personnel, having to do with Gene Duke Builders, Inc. or any of its officers, directors,

employees, or shareholders regarding performance on the Abilene Housing Authority CIAP projects in 1999, 2000, or 2001 or the Brady Housing Authority CIAP project TX 21 P 25190498

- 20) [t]he architect's field notes on the three prior C.I.A.P. projects prior to the referenced project on the Abilene Housing Authority's property
- 21) [a]ll field notes, inspection reports, and other notes made by the AHA inspectors as well as those of Ms. Roberta Thompson on these [three] projects
- 22) [a]ll asbestos reporting, and any complaints of tenants, or any other complaints or recommendations.

You state that AHA has previously provided the requestor with the information that is responsive to items 5, 10, 13, 16 and 17 of the request and that the requestor has been notified of this pursuant to section 552.232 of the Government Code. *See Gov't Code § 552.232* (governmental body shall certify to requestor that copies of all or part of requested information, as applicable, were previously furnished to requestor). Thus, we need not address those request items in this ruling. *See Gov't Code § 552.301*. You also state that AHA has provided the requestor with documents that are responsive to items 2 through 4, 11, and 14 of the requests.

You also state that AHA contacted the requestor and requested that he clarify items 1, 6, 9, and 15 of the requests. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We are in receipt of a letter dated August 30, 2001 in which AHA notifies the requestor that it needs clarification from him regarding items 1, 6, 9, and 15 of the requests. We assume for purposes of this ruling that this letter was sent to the requestor on this date, one day before the expiration of the ten business day deadline for requesting a decision from our office. Based on our review of all information that has been submitted to us, it does not appear, however, that AHA received the requested clarification. Thus, you need not respond to this portion of the request until you receive the requestor's clarification. We note, however, that when you receive the clarification, you must seek a ruling from this office before withholding any of the information that may be responsive to these request items. However, the clarification process does not result in an additional ten business days under section 552.301(a) once the AHA receives the clarification. *See Open Records Decision No. 663 (1999)* (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

You claim that some of the information that is responsive to request items 7, 8, 12, and 18 through 21 is excepted from disclosure pursuant to sections 552.027, 552.101, 552.102, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and your arguments against disclosure. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note that AHA failed to comply with the procedural requirements of section 552.301 of the Government Code with respect to the information that is responsive to request items 7, 8, 12, and 18 through 22. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). However, AHA did not provide us with any information that is responsive to request items 7, 8, 12, and 18 through 22.

When a governmental body fails to submit responsive information to us for review that it wishes to withhold from disclosure, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling interest for withholding information from disclosure to overcome this presumption. *See id.* Normally, a compelling interest is demonstrated when the governmental body claims in good faith that some source of law makes the information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). AHA claims that the information that is responsive to items 7, 8, 12, and 18 through 21 of the requests is excepted from disclosure pursuant to sections 552.027, 552.101, 552.102, 552.103, and 552.117 of the Government Code. However, because AHA did not submit a copy of the information that is responsive to these request items, we have no basis for concluding that any of the information is confidential by law or implicates third party interests. *See* Gov't Code § 552.301(e)(1)(D). Accordingly, we conclude that AHA must release all information that is responsive to items 7, 8, 12, and 18 through 21 of the requests to the requestor. In addition, since AHA claims no exceptions to disclosure for the information that is responsive to item 22 of the requests, that information must also be released to the requestor at this time.

In summary, AHA need not respond to request items 1, 6, 9, and 15 of the requests until it receives the requestor's clarification as to those items. AHA must release all information that is responsive to items 7, 8, 12, and 18 through 21 of the requests to the requestor. In addition, since AHA claims no exceptions to disclosure for the information that is responsive to item 22 of the requests, that information must also be released to the requestor at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Ronald J. Bounds".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 154430

Enc. Submitted documents

cc: Mr. James D. Norvell
Norvell & Associates
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(w/o enclosures)